

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY HOWARD GATES,

Plaintiff,

v.

M. NAVARRO, et al.,

Defendants.

Case No. 1:23-cv-00271-CDB

**ORDER GRANTING DEFENDANTS'
REQUEST FOR AN EXTENSION OF
TIME WITHIN WHICH TO FILE NOTICE
REGARDING EARLY ADR**

(Doc. 16)

Plaintiff Johnny Howard Gates, appearing pro se and *in forma pauperis*, brought claims arising under 42 U.S.C. § 1983. This action proceeds against Defendant J. Alejo and F. Barrios on Eighth Amendment excessive force claims and against Defendant M. Navarro on an Eighth Amendment failure to protect claim.

I. RELEVANT PROCEDURAL HISTORY

On August 25, 2023, this Court issued its Order Referring Case to Post-Screening ADR and Staying Case for 90 Days. (Doc. 14.) Relevant here, the parties were directed to file notice indicating whether they wished to participate in an early settlement conference within 45 days. (*Id.* at 2.)

On October 5, 2023, Defendants filed “Defendants’ Request for an Extension of Time to Opt Out Post-Screening Alternative Dispute Resolution; Declaration of Lauren Sanchez.” (Doc. 16.) Defendants seek an extension of time within which to file “a motion to opt out of the

1 settlement conference.” (*Id.* at 1.) More particularly, defense counsel declares that she has
2 “worked to conduct a full investigation and analysis of Plaintiff’s claims before the deadline to
3 opt out of ADR,” reviewing relevant records and discussing the case with Defendant Navarro and
4 her supervisor. (*Id.* at 3, ¶ 3.) Counsel declares the investigation will not be completed by October
5 10, 2023, because additional documents and “body-worn camera footage” has been requested of
6 the correctional institution, but not yet received. (*Id.*, ¶ 4.) Further, counsel has been unable to
7 schedule and complete several interviews. (*Id.*) Defendants request an additional 21 days within
8 to complete their preliminary investigation and to “file a motion to opt out of ADR, if necessary.”
9 (*Id.*, at ¶ 5.) Counsel declares the request is not made for any improper purpose or to cause undue
10 delay. (*Id.*)

11 II. CONCLUSION AND ORDER

12 The Court notes a “motion” is not required of Defendants should they elect to opt out of
13 ADR proceedings. Rather, Defendants need only complete and file the notice attached to this
14 Court’s August 25, 2023 Order. (*See* Doc. 14 at 3.)

15 Accordingly, and for good cause shown, **IT IS HEREBY ORDERED** that:

- 16 1. Defendants’ request for an extension of time within which to file notice concerning
17 participation in early ADR is **GRANTED**; and
- 18 2. Defendants **SHALL** file such notice **no later than October 31, 2023**.

19 IT IS SO ORDERED.

20 Dated: **October 6, 2023**

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22 UNITED STATES MAGISTRATE JUDGE
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